



Lamoine Board of Selectmen

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Minutes of January 6, 2011

Chair Jo Cooper called the meeting to order at 7:00 PM

Present were: Selectmen Richard Fennelly Jr., Cynthia Donaldson, William Brann, Gary McFarland, S. Josephine Cooper; Administrative Assistant Stu Marckoon, RSU 24 Representative Brett Jones, Assessors Michael Jordan and Jane Fowler, Regional Shellfishing Committee representatives Joe Porada, Jim Norris and Paul Davis; members of the public Kathleen DeFusco, Nancy & Jerry Dumas, Jean & Roland Donovan, Walt & Marion McFarland, William & Duncan Haass.

Minutes of December 16, 2010 – Several members submitted written corrections to the minutes. Richard moved to approve the minutes as revised. Gary 2nd. **Vote in favor was 5-0.**

Expenditure warrant 13 – Selectmen signed warrant 13 in the amount of \$37,297.11. Jo asked about the expenditures at Gilman Electric. Stu reported they were for GFCI outlets and bulb covers as required by the Bureau of Labor Standards.

Cash & Budget Report – Stu reported the report was off by 71-cents after he discovered a figure initially entered incorrectly on warrant 13. He said to save paper he did not print six copies of the corrected version. Richard asked if there were any encumbrances against the Capital Improvement fund as listed. Stu said he would check to see if the current year appropriation had been removed from that account.

Checking Account Reconciliation – Stu reported the reconciliation was in the material handed out tonight but he had not printed off the usual signature statement. He said the checkbook, reconciliation and General Ledger numbers all balance. Jo moved to approve the reconciliation, Richard 2nd. **Vote in favor was 5-0.**

Automatic Lien Foreclosure Status – Stu reported the town has automatically foreclosed on a subdivision lot as expected. He said the lot was assessed at \$5,400. He said a foreclosure waiver was filed in a matter he discussed with the Board via e-mail after a signed agreement with the affected taxpayer.

Marlboro Cemetery – Jo explained there was a concern that no formal organization existed to maintain the cemetery. Marion McFarland said she had a letter at home from Audrey Smith regarding an annual meeting of the Marlboro Cemetery Association, which indicates that an association existed sometime in the past. She said Mrs. Smith apparently passed responsibility on to her son Calvin and Calvin passed to his son George (Skip). She said the cemetery has been kept mowed. She said she and her husband gave land adjacent to the cemetery and the access road to the cemetery association. There was a brief discussion about the layout of the cemetery and the access road. Mrs. McFarland said they would like to see the land they donated cleared off.

Jo said Skip Smith wasn't sure how to go about selling more lots in the cemetery. Ms. McFarland said the piece they donated could be used for additional sites. There was a brief discussion about who is holding what money associated with cemetery lot care. Richard said he found some unclaimed funds listed on the State Treasurer's Website in the name of the Marlboro Cemetery Corporation. He said it's probably an inactive account. Nancy Dumas said a fund was left by Percy Bragdon. Stu said the town holds those funds. There was a brief discussion about how much money the town holds – it's approximately \$9,000 in total.

Mrs. McFarland said they were interested in seeing land cleared. Jo said Skip Smith had brought up building access to the cemetery from Lydia's Lane and that makes sense. Jane Fowler said Tim Ring was receptive to the idea of the Lydia's Lane access. Jo said the Selectmen were interested in getting some history about the cemetery and to see if there was any interest in forming an organization. She said she is interested in an organization, but not in leading it. Mrs. Fowler said if the money could be managed by the town treasurer, that might be a positive step. Stu said town meeting approval would be needed for that to happen. Mrs. Fowler said there ought to be a committee, but the records should be kept in a central location so that it's well known who is buried in the cemetery, where the grave sites are located, and the funds are accounted for. Mrs. Fowler said it would be helpful to map the cemetery. Jo said the Historical Society has decent maps.

Jane said it should be put to town meeting to have the town treasurer take charge of the funds. Cynthia asked if anyone wanted to be the point person for an association. Mrs. Fowler said there probably ought to be a meeting outside of the town government structure.

Gary reported that he spoke to Mr. Moseley who had written to the town a few weeks ago and he is interested in having the Moseley grave fall under the umbrella of care of a cemetery association.

Jo asked if there was interest in reviving the Marlboro Cemetery Corporation. Mrs. McFarland said the cemetery is not out of land. Bill said the town has a road commissioner – might it make sense to have a cemetery committee. Richard said there are already two cemetery associations in town. A brief discussion followed on the organized cemetery associations. Stu said if there is interest in forming a corporation's by-laws would have to be re-formed. Gary said he was interested in helping with an association. A short discussion followed regarding the former cemetery association. Mrs. Fowler, Mrs. Dumas and Mrs. McFarland also expressed interest. Jo said maybe a time could be set to get together. Mrs. McFarland suggested notifying other residents of Marlboro. Gary offered to be the point person. Stu said he could probably offer some assistance from the town office.

Certificate of Commendation – Jo read a certificate commemorating the celebration by Walton and Marion McFarland of their 60th anniversary. The audience broke into applause and pictures were taken of the Board handing the certificate to the McFarlands.

Landfill Well Monitoring – Selectmen signed a letter to Robert Birk of the Maine DEP regarding questions about residential well monitoring. Stu said he would send a copy to the well owners.

Town Report – Selectmen expressed satisfaction with the cover re-design. Stu thanked Great Ledge Road resident David Dennison for supplying the picture.

Stu reported the printer used the last two years agreed to hold the same price provided the size of the report is the same.

Selectmen agreed unanimously on a suggested citizen of the year, said choice to remain secret until the announcement at the 2011 town meeting.

Roads – Stu reported Richard McMullen has been very responsive when called to ask for plowing or sanding. He said the first winter of plowing has been a learning curve. Richard said he was satisfied with the response on Buttermilk Road. There was a brief discussion about a complaint from MacQuinn Road.

Stu reported the tree trimming on Needles Eye Road was done and the contractor's bill was paid on the warrant signed earlier.

Solid Waste Transportation Bid Award – Bill said he was bothered by the reported comment from one bidder recommending that another be awarded the job if they were not. There was a discussion about the various bids and the analysis of the bids. Stu noted that some capital costs would likely be needed if WFT were utilized, and he had not figured in the cost of constructing a cement pad.

Jo said the town utilizes Pine Tree Waste currently and they've done a good job. Cynthia said the town is familiar with Pine Tree, and the difference between the four bids (excluding the WFT bid) was less than \$500 in the first year. She moved to award the bid to Pine Tree Waste. Jo 2nd. **Vote in favor was 5-0.**

Recycling Bid – Stu reported that after making an analysis of the three bids and applying the current transport schedule, it appears that Pine Tree Waste came in significantly lower. Cynthia noted that Pine Tree wants to ship recyclables to Ellsworth instead of Coastal Recycling, but she likes that Coastal is a locally generated small business. Richard moved to award the bid to Pine Tree Waste, Jo 2nd. **Vote in favor was 5-0.**

Code Enforcement Officer – Leave – Stu reported Dennis Ford would be gone 3-to-4 weeks. Mike Jordan said he would be covering. Stu reported Mr. Ford is aware that the employment contract will be adhered to in regard to payment.

Violation – Stu reported that town attorney Tony Beardsley has received communication from Mr. Seibel and would advise Mr. Seibel to contact the Code Enforcement Officer. Jo asked if Mr. Seibel had any problem getting his mail. Stu reported he had signed for

the certified letters. Richard said from the nature of his communication, Mr. Seibel was irritated that his property had been visited. There was a discussion about site visits by assessors and code enforcement officers.

Request of Assessors regarding legal representation – Jo said the Selectmen met with the Board of Assessors at the last meeting and requested more information on the potential cost of an attorney. Jane Fowler said the Selectmen have a copy of the e-mail letter from Ed Bearor. She said the Board of Assessors needs to have that expenditure approved, and the Board of Selectmen needs to support the Board of Assessors, and should not make a judgment on the case before it gets to the Property Tax Review Board (PTRB). She said it would be a slippery slope to deny legal representation for a town board, and asked what would happen if the Planning Board needed a lawyer on a matter. She said she feels like the Selectmen have been made ex-officio members of the Board of Appeals.

Jo said the concern with the Board of Selectmen was to control the costs of an attorney. She said she wanted to know in advance what she would be saying “yes” to. She said she was not comfortable not knowing the costs. Mrs. Fowler said at the last meeting that Richard had said that he had gone before the PTRB, but not without an attorney. Richard said he views this from the perspective of citizen responsibility for town taxpayer funding. A short discussion followed on the potential costs.

Richard said the town has a written decision from the PTRB. Mrs. Fowler said to not say another word. She said the decision said the assessors would give the parties a 60-day notice. Richard said he is just one member of the Board to decide whether it would be a good or bad investment. He said he understands clearly what the decision means. He asked when the PTRB decision says the assessment is abated, what does that mean. A heated discussion followed. Assessor Michael Jordan said the PTRB decision was dismissed without prejudice. A brief discussion followed.

Jo said there is a question before the Board of Selectmen. She said she has no idea, but she is unhappy that we have to be at this place. She said she feels she needs to accept what the assessors are telling the Board. Mrs. Fowler said the reason this was not appealed to Superior Court was that they met with attorney Ed Bearor, but they were so sure the Selectmen wouldn't approve the money to go before superior court. Richard asked why they thought the Selectmen would approve the money now. Mrs. Fowler said she never gets support, but feels like she might now. A brief discussion followed.

Jo said this situation is open to a lot of interpretation. Richard said if this case goes back before the PTRB and the Assessors did not abate the supplemental tax, the PTRB would not be sympathetic to the town. Mrs. Fowler asked the Selectmen to let them meet with attorney Bearor for a couple of hours to tell the Assessors that.

Jo said there is a town board asking to do their work, she's willing to support to this point, but she's not willing to write a blank check. Mrs. Fowler said the Assessors could not supply the information to Mr. Bearor without him sending a bill. Richard said he

asked Assessor Terry Towne at the last meeting if the Board of Assessors would continue this case, even if the town lost, and Mr. Towne replied that it depended on the outcome. Jo said she understands that. She said the question appears to be whether the Board of Assessors has a vendetta or is trying to do the right thing, and she believes the Assessors are trying to do the right thing. Mr. Jordan said if the town loses on a true decision from the PTRB, the Board can live with it. A brief discussion followed. Bill said when he heard Mr. Towne say he didn't know if the Assessors would continue, it said to him that if Mr. Towne didn't get what he wants, the fight would continue to the bitter end. He said the Selectmen need to be very careful when bringing the full weight of the town against a citizen. He said the Selectmen could be culpable if the decision goes against the town. Mrs. Fowler said the Selectmen control the purse strings, and they have to come to the Selectmen to ask for money. Bill said he disagreed. A discussion followed about the previous expenditure request by the Assessors for an attorney.

Cynthia said she objects to the language of "goes well for the town". She said we are trying to resolve a dispute. She said the proposal is to spend up to a certain amount of money. She said the first thing to look at is the previous decision to see if it is a done deal. She said if it's over, it is settled.

Brett Jones said there is a flip side to Bill's argument. He said if someone has property in tree growth, everyone else in town picks up the difference. He said pursuing the truth is to ensure that the proper tax is paid by the proper persons. Richard said that's correct, but that he believes there were extenuating circumstances that led to this whole thing, and it's an unfortunate set of circumstances. Mrs. Fowler said she didn't believe that was accurate. A lengthy discussion followed.

Gary asked whether, if the assessors obtain the attorney, and this goes to the state, would it go toward resolving the issue. Mrs. Fowler said if the Assessors provide the information the attorney needs, if it goes nowhere, it ends. She said the Board of Assessors has been cohesive. Gary said it looks as if the assessors are looking to get this resolved. Mrs. Fowler said "absolutely". She said she was surprised by the figures from attorney Bearor, and felt they looked reasonable. A short discussion followed.

William Haass said he agreed with Mr. Jones that if someone is not paying the tax the assessors should do what is needed to be in compliance. Mr. Haass said his mother (Barbara Davis) did not know she was not in compliance. He reviewed the case from last February. He said the problem is that the Assessors have their own rule book. He suggested that the Assessors call the state for an explanation of the decision letter. He said a judge would laugh at the town if he sees the decision. He said his mother has \$60,000 tied up in this matter. He said the Assessors would not discuss the matter with his mother, the attorney and the forester. He said he and his mother would fight this until the bitter end. He said his mother and the town would both lose money. He stated they would appeal if they lose.

Jo said she is concerned that this not cost the town too much money. She moved to approve the use of an attorney for the Board of Assessors, up to \$7,500. Mr. Haass asked if this included the \$1,000 that was already spent. Jo said there is a request from

the Board of Assessors to resolve this issue, and the motivation is to not cost more than necessary. Mr. Haass asked if it's understood that the town doesn't prevail, the town would back away. Mr. Jordan said if the town loses in Augusta, he would not push any further. Jo said depending on the outcome, there is the potential for further litigation. Cynthia 2nd the motion. **Vote was 2 in favor, 3 opposed (Fennelly, McFarland & Brann).** The motion failed. Jo said she is concerned that it would cost the town more money without an attorney.

Richard said the PTRB ruling affected both parties, and the PTRB said to abate the tax penalty. Cynthia asked if Richard would agree to ask a lawyer to interpret the ruling. Richard said he knows what it says. Mrs. Fowler said he doesn't know the whole case, and asked if the board would not even approve \$300 for an initial consultation. Jo asked if there could be a consultation. Mrs. Fowler said it is unfair to put the Board of Assessors in this position. Richard said he made his decision based on the best interest of the town. Jo said she doesn't rely on her own expertise on some matters, and she would like an external person to review this. A heated discussion followed on who is paying to consult with attorneys. Mr. Jordan said attorney Bearor is familiar with the case. There was a discussion about what information attorney Bearor has seen. Mr. Jones said it is shameful that the Selectmen would not support at least a consultation.

Jo asked what happens next. Mrs. Fowler said the Assessors would go to Augusta without an attorney. She said Mrs. Davis and the Maine Coast Baptist Church have already notified the Assessors an appeal would be filed. She said the action by the Selectmen has forbidden the Assessors to do their job. Cynthia said she didn't think there were any lawyers present in the room, and asked why an upfront consultation couldn't take place.

Stu said he thinks there is some confusion. He asked the assessors if there is a new case. The assessors said yes. Stu said he believed the request for representation is the new case before the PTRB. Jo said she thought that as well. Stu said the case involves the case of the Assessors giving new notice then reimposing the supplemental tax, and calling it even because it has already been paid. Mrs. Fowler reviewed the newest case history.

Jo said maybe she would try re-wording the motion. She moved to allow the assessors representation in the case and to spend no more than \$7,500. Mr. Haass asked what the last vote meant. A discussion followed. There was no 2nd to the motion.

Stu said he was hearing that there is some desire to consult with an attorney and suggested that the Selectmen and Board of Assessors meet with attorney Bearor in executive session. A short discussion followed. Richard suggested that the Assessors ask for a legal line in the next budget. Mrs. Fowler asked if the administration budget could be amended at town meeting. Both Stu and Mr. Jones answered that is possible. More discussion followed.

Jo moved to authorize expenditure to meet with attorney Ed Bearor jointly with the Assessors. A lengthy discussion followed on who would supply the information and

control the meeting. Mrs. Fowler said the Assessors would send the information. Stu restated the motion at the request of the chair and those in the audience. Mr. Jordan said he would rather send the information to Mr. Bearor first and not have an executive session. Jo said such a meeting might be able to cut to the chase. More discussion followed, but a 2nd to the motion did not.

Cynthia moved to approve up to \$600 for the assessors to consult with an attorney on whether to pursue the matter. Mr. Haass asked for clarification. Cynthia said the purpose of her motion was to let the assessors ask for some advice on how to proceed. Mrs. Fowler said she believed that Mr. Bearor told them when they last spoke to him on the matter that the town would have prevailed in 5-minutes in Superior Court. Gary asked if the Assessors have to go to Augusta. Mr. Jordan said they would, the question is whether they go with or without representation. He said without representation the town would lose. A short discussion followed. There was no second to the motion.

Jo said she was really confused before, but we're not reviewing the same case again. Stu asked if the town had actually received a notice of the filing. Mrs. Fowler explained the time table on filing receipt, and the town has not yet received anything from the state. Mr. Jordan said notice was sent from an attorney, not from the PTRB. Jo said the Assessors apparently were not clear on why they were seeking an attorney. She said they don't have anything definite yet. A short discussion followed on various dates.

Cynthia moved to allow the assessors to expend up to \$7,500 for the new appeal before the Board of Property Tax Review. Jo 2nd. Jo said it was very confusing to get an e-mail before the meeting of the previous case. She said she wanted to make sure everyone was clear that this is for the new case that will be going before the PTRB. **Vote was 2 in favor, 3 opposed (Fennelly, McFarland & Brann). The motion failed.**

Town Meeting – Stu supplied the Selectmen with a rough draft of the town meeting warrant. He reported that Harvey Kelley has agreed to be the moderator again.

Joint Board Formation – Brett Jones said there currently is a dormant long range planning committee that has never been disbanded. He said the Selectboard did nothing with the report that board had generated. Jo said the Veteran's Memorial was a result of the committee. Mr. Jones said that committee was given no direction from the Selectboard, and read a portion of the report. He said there appears to be some desire from the Selectmen to lower the tax burden, and suggested that subdivisions provide a fair amount of revenue to the town. He said he was unconvinced that business development would result in any real benefit to the town. He said it would be better to spend time on building development issues.

Jo said this was very similar to the conversation the Selectmen had with the Planning Board last month. She said the Planning Board said it doesn't have any real time for planning because they're dealing with permit applications. She said the idea was to make business opportunities happen. She said there are things that the town can do. A short discussion followed.

Mr. Jones said a committee would really benefit from having a narrow direction from the Selectmen. He said having both the site plan review and the subdivision section of the Building and Land Use ordinance apply to subdivisions makes it a burdensome process.

Richard said North Lamoine appears to be off limits for development, and yet that is where the development pressure would logically be located. Mr. Jones said the present Comprehensive Plan is mostly facts and figures and offers little guidance. He said maybe development of a guidance document would be helpful. Jo said that seems to be the same direction the Planning Board and Selectmen are talking about.

Other – Shellfishing Closure – Richard reported the Department of Marine Resources (DMR) has imposed a new closure on the Skillings River as of January 4, 2011 due to fecal coliform. He said he's concerned that unless some action is taken to find the point source for this contamination, the closure will continue. Joe Porada said there are a bunch of issues, but the hottest points appear to be at Eagle Point and Partridge Point. He noted the Iron Slipper Farm is located on Eagle Point. There was a discussion about the possible contamination sources.

Richard said that Rob Goodwin of the DMR advised him that the Local Plumbing Inspector is now responsible to discover point sources of pollution. He said if the diggers see some obvious discharge, they could report that to the LPI. Mr. Porada said diggers would not be digging in the closed area. He said the Regional Shellfishing Committee meets on January 18, 2011 and will discuss a pollution abatement program. Richard noted that state grants are available for septic repairs.

Mr. Porada said the Department of Marine Resources thinks animals may be responsible. He said the ground was saturated then froze over. He said a pollution abatement plan needs to be studied and asked how to approach farms and animal owners in the area. Jo asked if the DMR could help. Richard said the state has very limited resources. Jo said she meant asking for some advice. Mr. Porada said the shore needs to be walked to look for the point source. Discussions followed on animal sources and self testing.

Richard asked to what extent the Conservation Commission might be interested in finding the source(s). Cynthia said now that it's the LPI's responsibility, could he be asked to check Martin's Cove/Stream. Richard said there are issues about access to private property. Mr. Jordan said since he'll be filling in for about a month, he'll likely be the one to have to do it. Mr. Porada said that diggers need to get volunteer conservation time in, and that might be a group to tap into to walk the shore. A short discussion followed on the borders of the closure area.

Jo asked if this issue could be delegated to the licensees and have them coordinate with Mr. Jordan. Mr. Porada said maybe they could coordinate with the Conservation Commission. Jim Norris said he planned to talk with the Conservation Commission to get permission to check area.

Mr. Porada noted there was a full page article about the Frenchman Bay program in the last's Maine Sportsman Magazine.

Resignation from Planning Board – Jo moved to accept with extreme regret and high praise for service the resignation of Michael Garrett from the Planning Board. Richard 2nd. **Vote in favor was 5-0, and Selectmen signed a letter to Mr. Garrett.**

Planning Board Replacement – Jo moved to appoint present Planning Board alternate Donald Bamman to become a full member, filling Mr. Garrett's seat, and to advertise for an alternate Planning Board member. Richard 2nd. **Vote in favor was 5-0.**

Aquaculture Application – Stu noted that a renewal application has been filed by Warren Pettegrow with the state for an aquaculture operation at Seal Point and it is posted on the bulletin board.

GAT – Stu noted that the Guaranteed Annual Tonnage listing from the PERC plant is included in the materials handed out tonight, and Lamoine stands at 600-tons/year. He said 2010 came in about 12-tons short.

There being no further business, the meeting adjourned at 9:50 PM

Respectfully submitted,

Stu Marckoon, Adm. Asst.